

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION**

**SARATOGA POTATO CHIP** )  
**COMPANY, INC., a/k/a Olde York** )  
**Potato Chips, et al.,** )  
) )  
**Plaintiffs,** )  
**v.** )  
) )  
**CUETARA HOLDINGS, INC., et al.,** )  
) )  
**Defendants.** )

**Case No. 1:12-cv-452**

**OPINION and ORDER**

A telephonic scheduling conference was held today in this matter at which the following counsel appeared: Attorney Eric Kirschner for Defendants Classic Foods, Inc., and Cuetara Holdings, Inc.; Attorney Theodore Storer for Defendant Balance Foods, Inc.; and Attorney Adam Hand for Plaintiffs Saratoga Potato Chip Company, Inc., and Saratoga Potato Chips, LLC. (Docket # 84.) Oral argument was heard and concluded on the Motion for Leave to Withdraw filed on October 6, 2014, by Attorney Kirschner, who seeks to withdraw as Classic’s counsel, but remain as counsel for Cuetara. (Docket # 80.)

Attorney Kirschner asserts that he seeks to withdraw because Classic is “no longer in existence.” But Attorney Hand reports that Classic remains a corporation in good standing in the State of Delaware—an assertion which Attorney Kirschner does not refute. Accordingly, Attorney Kirschner has not shown a persuasive basis for the motion to withdraw.

Moreover, the Court would still deny the motion because Saratoga served Classic with discovery requests on June 26, 2014, well before Attorney Kirschner filed his motion to withdraw. (Docket # 79.) These discovery obligations remain outstanding, providing additional

grounds to deny the motion. *See, e.g., Denton v. Suter*, 3:11-cv-2559-N, 2013 WL 5477155, at \*4 (N.D. Tex. Oct. 2, 2013) (denying defense counsel's motion to withdraw filed in the midst of a discovery dispute); *Small v. Regalbuto*, No. 1:06-cv-1721, 2009 WL 1911827, at \*2 (N.D. Ohio June 29, 2009) (denying defense counsel's motion to withdraw when defendant still had outstanding discovery obligations).

For these reasons, the Motion for Leave to Withdraw filed by Attorney Kirschner, seeking to withdraw as counsel to Classic (Docket # 80), is DENIED.

SO ORDERED.

Entered this 9th day of October, 2014.

s/ Roger B. Cosby  
Roger B. Cosby,  
United States Magistrate Judge